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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 30th August, 2024

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BAIL APPLN. 3595/2022**GURUPADA MAJI**

.... Petitioner

Through: Mr. N. Hariharan, Senior Advocate with Mr. Sumer Singh Boparai, Mr. Sidhant Saraswat, Mr. Siddharth S. Yadav, Mr. Varun Bhati, Ms. Srishti Khanna, Mr. Mueed Shah, Ms. Sneha Bakshiram and Mr. Rahul Yadav, Advocates

versus

ENFORCEMENT DIRECTORATE

..... Respondent

Through: Mr. Anupam S. Sharma, Special Counsel, ED with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra, Mr. Ripudaman Sharma, Mr. Vashisht Rao and Mr. Syamantak Modgill, Advocates

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This judgment will dispose of the application for regular bail filed by applicant Gurupada Maji S/o Late Sh. Narayan Maji, through his *paikar* under Sections 45 and 46 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') read with Section 439 Cr.P.C.
2. Case of the Respondent/Enforcement Directorate ('ED') is that CBI, Kolkata registered an FIR No. RC0102020A0022 dated 27.11.2020 for offences punishable under Sections 120-B/409 IPC and Section 13(2) read



with 13(1)(a) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act'). As per the FIR, Anup Majee, Amit Kumar Dhar and several other public and private persons were involved in activities related to illegal excavation and theft of coal from leasehold area of Eastern Coalfield Limited ('ECL'). It was alleged that Anup Majee led the syndicate of illegal coal miners in active connivance with officials of ECL, CISF, Indian Railways and other departments, who facilitated in misappropriation of coal thereby committing criminal breach of trust of Government property entrusted to them. During investigation, large number of vehicles and equipments used in illegal coal mining and its transportation were seized and several instances of installing illegal weigh bridges in concrete form were detected. CBI filed charge sheet against Anup Majee and 40 other accused on 19.07.2022 in the Court of learned Special Judge (CBI), Asansol, West Bengal and Court has taken cognizance of the offences. Applicant is Accused No. 10 in the CBI case.

3. Investigation revealed that Anup Majee and his associates were the organizers of the illegal coal mining at the ECL area and he was also controlling the business of storage, transportation and sale of coal as well as collection of 'proceeds of crime' ('POC') with the assistance of his associates Gurupada Maji (applicant herein), Joydeb Mondal, Narendra Kharka, Nirad Baran Mondal and Ratnesh Verma and several other co-accused persons, under the protection and patronage of co-accused Vinay Mishra and Vikas Mishra, who are influential persons and used their contacts to ensure that the illegal activities were carried out smoothly without any hindrance and in turn shared the sale proceeds. Investigation also revealed that Anup Majee regularly engaged many of the co-accused



persons for illegal mining and maintaining accounts of the quantum of coal dispatched to different beneficiary companies. As per ED, there has been illegal excavation and pilferage of approximately 25,51,382.85 MT of coal worth Rs.11,14,35,43,801/- at the leasehold area of ECL.

4. On the very next day of registration of the FIR i.e., on 28.11.2020, present ECIR bearing No.17/HIU/2020 was registered under Sections 3 and 4 of PMLA based on the scheduled offence but the applicant was not named in the ECIR. Applicant was released on regular bail by the CBI Court in the scheduled offence vide order dated 23.11.2021. Prosecution complaint *qua* some co-accused persons was filed on 13.05.2021 and statements of the applicant were recorded on 23.09.2021 and 24.09.2021, whereafter he again joined investigation and gave his statements on 24.05.2022, 25.05.2022 and 26.05.2022. Applicant was arrested on 27.05.2022 and produced before the learned Special Judge, who remanded the applicant to ED custody till 02.06.2022. On 02.06.2022, applicant was sent to judicial custody.

5. Applicant was one of the 04 partners in the illegal coal mining business and had 25% stake therein. Investigation revealed that Niraj Singh, accountant of Anup Majee maintained the records of POC generated from illegal mining, which were seized by the Income Tax Department and forwarded to ED for further investigation. Between July, 2018 to December, 2020, the syndicate of Anup Majee, which included the applicant generated Rs. 2742.32 crores of POC from illegal coal mining. Records seized by the Income Tax Department revealed that applicant received POC to the tune of Rs. 89.04 crores, either directly or through his nephew Tapas Maji while the applicant was in custody in connection with a case under the NDPS Act, 1985. WhatsApp communications between the applicant and Niraj Singh



and digital evidence seized from residence of Subhash Agarwal, CA of the applicant revealed transfer of POC to the applicant. Records such as loose sheets/ledgers seized from applicant's office at Balitora, Purulia show his clear involvement in the illegal coal mining.

6. Applicant has indulged in illegal coal mining and laundering of tainted money and POC generated from the scheduled offence were concealed by acquisition and use of POC by resorting to complex and multi-layered transactions through multiple persons and sham companies. Applicant and his family members were Directors/proprietors/partners in various shell companies during 2017-18 to 2020-21 which they acquired at nominal prices compared to their actual net worth for the purpose of laundering of POC generated from illegal coal mining, with the aid of Subhash Agarwal and Manoj Agarwal. Several attempts were made by ED to trace out the POC and attach the same for preventing their dissipation or creation of third party rights but they were not available for direct attachment under Section 5(1) of PMLA as the accused persons have consumed/concealed/transferred the POC. Efforts to trace out the properties were also unsuccessful and hence properties of equivalent value were attached in consonance with the provisions of Section 2(1)(u) of PMLA.

7. Applicant is a close associate of Anup Majee and a partner in crime relating to illegal coal business. He received Rs.25 per metric tonne against total collection of 2,000 PMT, which was collected in cash from various steel plants against supply of illegal coal, a fact admitted by Anup Majee in his statement dated 21.06.2021 under Section 50 of PMLA. Scrutiny of digital evidence and records seized by Income Tax Department in November, 2020 from the office of applicant revealed that the mobile



number used for transferring the POC to Delhi and Kolkata was in the name of the applicant, a fact admitted by Subhash Aggarwal in his statement dated 21.06.2022 under Section 50 of PMLA. Applicant also sent an audio message to one Niraj Singh indicating transfer of Rs.50 lacs to Delhi on 08.05.2018 which tallied with the record of Niraj Singh. Report of the voice sample is awaited. Driver of Anup Majee, Bamapada Dey who delivered the POC to the applicant, in his statement dated 09.11.2021 under Section 50 on being shown a photograph recognized the applicant and stated that when applicant was in jail from September, 2018 to November, 2019, Tapas Maji, nephew of the applicant brought illegal coal collection money in his absence.

8. In a nutshell, according to the ED, involvement of the applicant in receiving and transferring POC is evident from records maintained by Niraj, Bamapada Dey, Rabin Kalai, etc. as also from incriminating documents seized by the Income Tax Department from premises belonging to him and situated in Purulia. Further, applicant in his statements dated 01.06.2022 and 02.06.2022 admitted that he had provided Rs.26 crores to Chartered Accountant Subhash Agarwal and Rs.78 crores to Manoj Agarwal, another Chartered Accountant in cash, during 2016-17 to 2019-20 for acquisition of M/s. Goldy Distributors Pvt. Ltd., M/s. Anjaniputra Sales Pvt. Ltd. and other 04 companies through accommodation entries and was unable to provide evidence regarding source of huge cash paid by him to the 02 Chartered Accountants. Applicant admitted that he was looking after these companies and his family members were Directors in these Companies.

9. Investigation revealed that Nilima Maji, wife of the applicant and the wife of Anup Majee are both Directors in M/s. Excel Infrabuild Pvt. Ltd.



(Bihari Nath Resort) and expenses to the tune of Rs.1.63 crores were paid from POC, which is reflected in the records maintained by Niraj Singh. It is further stated that the investigation is ongoing and further POC are yet to be unearthed.

SUBMISSIONS ON BEHALF OF THE APPLICANT

10. Applicant is innocent and has been wrongly arraigned as an accused without *iota* of evidence against him and the entire case of ED is based on figment of imagination. ECIR is based on an FIR registered by the CBI on 27.11.2020 and notably, applicant was not named as an accused when the FIR was registered. ED filed the main prosecution complaint qua some co-accused on 13.05.2021. Applicant joined investigation on several occasions and co-operated therein. He was thoroughly investigated and his statements were recorded on 23.09.2021, 24.09.2021 and from 24.05.2022 to 26.05.2022 and despite rendering full co-operation, he was illegally arrested and thereafter sent to judicial custody. Supplementary charge sheet has been filed on 24.07.2022, wherein applicant was arraigned as Accused No.3 and since demonstrably the investigation is complete qua the applicant, there is no requirement of continuing his judicial custody.

11. Applicant has been in judicial custody since 02.06.2022 and has already suffered long incarceration. Supplementary charge sheet was filed in July, 2022 but investigation is proceeding at a snail's pace. Since the filing of the last supplementary charge sheet, two Investigating Officers have changed but there is no progress. In the absence of completion of investigation, there is no likelihood of the trial concluding anywhere in the near future as the same has not even commenced. There are 64 witnesses and 174 relied upon documents running into 3900 pages and the trial will



itself take years to conclude, as and when it commences. Incarceration of the applicant is amounting to pre-trial detention, which is violative of Article 21 of the Constitution of India as held by the Supreme Court in *Sanjay Agarwal v. Directorate of Enforcement*, 2022 SCC OnLine SC 1748; *Amarjeet Sharma v. Serious Fraud Investigation Office*, SLP (Crl.) 6921/2023, decided on 10.10.2023; *Rabi Prakash v. State of Odisha*, 2023 SCC OnLine SC 1109; and very recently in *Manish Sisodia v. Directorate of Enforcement*, 2024 SCC OnLine SC 1920. Delay in trial and continuous incarceration are factors which have always weighed with the Supreme Court for grant of bail even under UAPA wherein twin conditions similar to those in Section 45 of PMLA exist. In *State of Kerala v. Raneef*, (2011) 1 SCC 784, the Supreme Court granted bail where the accused was in custody for 66 days and charge sheet had been filed. In *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, while granting bail to the accused in a UAPA matter, the Supreme Court held that a constitutional Court cannot be barred by statutory provisions from granting bail on ground of constitutional violations and also held that under-trials cannot be indefinitely detained in custody.

12. Applicant satisfies the general principles of regular bail even relating to economic offences. In *Satender Kumar Antil v. Central Bureau of Investigation and Another*, 2022 SCC OnLine SC 825, the Supreme Court observed that an economic offence cannot be classified as a separate class for the purpose of bail and law laid down in *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791 and *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40, shall govern the law on bail in economic offences. In *Manish Sisodia (supra)*, the Supreme Court has



highlighted that bail is the rule and jail is an exception and right to bail has to be read into Section 439 Cr.PC and Section 45 of PMLA.

13. Applicant is not a flight risk and has deep roots in the society. There is no allegation that applicant attempted to influence witnesses before he was arrested. The entire evidence is documentary in nature and all documents are already in the custody of the investigating agencies and there is no question of tampering with them. Applicant is on bail in the scheduled offence granted by the CBI Court. Applicant is also entitled to bail on parity as co-accused, Vikas Mishra with alleged involvement in generation of POC to the tune of Rs. 731 crores was granted regular bail by the learned Trial Court vide order dated 10.10.2023. It is a well settled proposition that parity is a recognized principle for grant of bail. **[Ref.: *Kamaljit Singh v. State of Punjab and Another*, (2005) 7 SCC 226].**

14. Bail is also sought on the ground that applicant suffers from various medical ailments, such as Neurological tremors, Grade IV haemorrhoids, Diabetes Mellitus-II, Anaemia, Focal Dystonia and Flexion deformity in his finger and is not receiving proper medical treatment in judicial custody. The neurological disorder of the applicant continues to deteriorate apart from frequent tremors leading to his body showing involuntary movements. Applicant has no criminal antecedent.

15. Even on merits ED has no case against the applicant. As per supplementary charge sheet, the alleged POC identified *qua* the applicant is to the tune of Rs.89.04 crores. The figure of Rs.89.04 crores is based on inadmissible evidence such as handwritten registers, diaries and vouchers maintained by Bamapada Dey, Rabin Kalai and Sanu Mallick (aides of Anup Majee) at: (a) Bhamuria office; and (b) IOCL Petrol Pump of Anup



Majee. The diaries and registers are not proper ‘books of accounts’ under Section 34 of the Indian Evidence Act, 1872 (‘Act 1872’) to be admissible in evidence and have not been maintained in the ordinary course of business. Vouchers based on which some of alleged entries were made in the registers are missing. Authors of diaries deny having any knowledge of the transactions and stated that entries were made on instructions of Anup Majee or Bamapada Dey and therefore entries are not proved in accordance with law. Reliance is placed on the judgment of this Court in ***L.K. Advani v. Central Bureau of Investigation, 1997 SCC OnLine Del 382***, to argue that there is a difference between a proper book of account under Section 34 of Act 1872 and an ordinary diary. Reliance is also placed for this proposition on ***Central Bureau of Investigation v. V.C. Shukla and Others, (1998) 3 SCC 410***. Diaries and registers have interpolations and overwritings. Moreover, during the relevant period 09.09.2018 to 08.11.2019, applicant was in judicial custody. Bamapada Dey has stated that the monies were received in the said period through Tapas Maji, who denied meeting Bamapada Dey or receiving any payment from him.

16. POC is also based on alleged ledger entries maintained by one Niraj Singh, Chartered Accountant of Anup Majee at his Kolkata office. Niraj is absconding for over 04 years and the entries being uncorroborated cannot be relied upon. It is a settled law that only the maker of the entries can prove the same. Even otherwise these entries have no veracity in law. As per the ledgers, the figure of alleged POC is in lakhs, however, based on statement of Anup Majee, it is claimed by ED that the figures in the ledgers were purportedly suppressed by two digits. Anup Majee cannot prove the entries made by Niraj and ascertain the figures or the true value of the entries and



thus in the absence of a statement by Niraj, reliance on the ledgers is misplaced. Even assuming ledgers are admissible in evidence, at best they are corroborative in nature and have no independent probative value in terms of Section 34 of Act 1872 so as to fasten any liability on the applicant. Thus the prosecution has failed to establish that POC of Rs.89.04 crores *qua* the applicant as the same is based on diaries/registers/ledgers, which are inadmissible in evidence for the foregoing reasons and in the absence of proof of POC, the case of ED is bound to fail at the trial and applicant is entitled to be enlarged on bail.

17. There are serious contradictions in the quantification of POC as well and ED has been unable to establish any nexus or link with the scheduled offence. At one place, to compute POC of Rs. 89.04 crores, a figure of Rs.3.18 crores is attributable to ledgers of Niraj Singh, however, at another place the figure changes to Rs.36.79 crores, without any reason. Prosecution has relied on unreliable statements of co-accused persons or suspects which are laden with material improvements and stark contradictions. Firstly, statements given by co-accused persons Bamapada Dey, Rabin Kalai, Anup Majee and Sanu Mallick are not worthy of credit in terms of Illustration (b) to Section 114 of Act 1872 being the weakest form of evidence. Secondly, statements show marked improvements. Once Anup Majee joined investigation after being an absconder for long, his house helps and drivers stated improving statements to incriminate the applicant.

18. Bamapada Dey, in his first statement dated 18.03.2021 stated that he was a driver who delivered cash on instructions of Anup Majee and Ashok Mishra and never opened or counted the cash in the cartons. He stated that he never made any vouchers or maintained registers and used to countersign



the vouchers as proof of delivery. Contradicting himself, he later stated that he used to maintain diaries. Rabin Kalai in his statement dated 16.04.2021 stated that he was a house help of Anup Majee, and used to do household work like cleaning, gardening etc. for the family of Anup Majee but in his statements dated 28.07.2021 and 04.08.2021, after Anup Majee joined the investigation, he stated that he maintained registers at Bhamuria office of Anup Majee and made entries in these registers on instructions of Bamapada Dey and Anup Majee. None of them had personal knowledge of the transactions and their statements are at best hearsay evidence and have no evidentiary value. Reliance was placed on the judgement of this Court in ***Sanjay Jain v. Enforcement Directorate, 2024 SCC OnLine Del 1656.***

19. It is astute law that unaccounted money can at best be a tax violation but not an offence under Section 3 of PMLA and cannot be termed as POC in the absence of any nexus with the scheduled offence. A direct link with the scheduled offence and generation therefrom is a *sine qua non* for any money or property to be termed as POC. Reliance was placed on ***Vijay Madanlal Choudhary and Others v. Union of India and Others (and other appeals), 2022 SCC OnLine SC 929.*** ED has failed to establish a nexus between the alleged POC of Rs. 89.04 crores and the accommodation entries made by the applicant. Accused Nos.6 to 9 companies were acquired by the applicant or his family members in March, 2017 to June, 2017 whereas the period of alleged generation of POC is December, 2017 to October, 2020. Generation of POC cannot precede the commission of the scheduled offence. The amounts generated by accommodation entries made by CA Subhash Agarwal and deceased Manoj Agarwal were through sale of unquoted shares. Subhash in his statements dated 06.12.2021 and



07.12.2021 has stated that he is not aware about the source of the cash from which the entries were made and none of the Directors of these companies have either been examined or made accused by the ED. Thus normal financial transactions cannot be given a colour of POC without establishing a nexus with the predicate offence and the identified POC thereof.

20. ED has been selectively investigating and arresting persons. As per the case set up by ED, Anup Majee is the mastermind and kingpin but he was absconding for a long time and even when he joined investigation he was not arrested in the present case ECIR. He surrendered before the CBI Court, Asansol on 14.05.2024, in connection with illegal smuggling of coal. Makers of entries in diaries/ledgers, etc. have not been arrested and the applicant is being targeted. In ***R. Vasudevan v. CBI, New Delhi, 2010 SCC OnLine Del 130***, this Court observed that while it is true that investigation is the exclusive domain of the investigating agency and ordinarily the Court would not interfere, but the High Court will intervene where the investigating agency acts in a discriminatory or arbitrary manner and conducts pick and choose and lopsided investigation.

21. Applicant satisfies the twin conditions under Section 45 of PMLA as he is neither guilty of the alleged offence nor has the propensity to commit an offence if released on bail. At the time of considering a bail application under PMLA, Court has to be reasonably satisfied that accused is not guilty of the offence and that he is not likely to commit any offence while on bail. To make out a case under Sections 3 and 4 of PMLA, it is essential that the applicant is shown to be involved in any process or activity connected with POC, which in the instant case ED has failed to show. The Supreme Court has from time to time reinforced that while considering bail, Court cannot



conduct a mini trial and only a *prima facie* view is to be taken with regard to satisfaction of the twin conditions and in the present case, the entire evidence so far put forth by the ED is based on hearsay evidence, inadmissible ledgers/registers/diary entries, which are uncorroborated and Section 50 statements, which are inadmissible in evidence, in the absence of corroboration and therefore, this case does not warrant rejection of the bail application. Reliance is placed on the judgment of the Supreme Court in ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Another, (2005) 5 SCC 294***, *albeit* in a case of MCOCA, where the Supreme Court held that the restriction on the power of the Court to grant bail should not be pushed too far and provisions such as Section 43(D)(5) of MCOCA do not lead to the conclusion that the Court must arrive at a positive finding that the applicant has not committed an offence under the Act. In ***Manish Sisodia (supra)***, the Supreme Court has reiterated the principle that where the trial is likely to take many years and an individual is suffering long incarceration, depending on the nature of the allegations, right to bail will have to be read into Section 45 and therefore, on the touchstone of Article 21 of the Constitution of India, applicant is entitled to be enlarged on bail. Reliance is placed on the recent judgments of the Supreme Court in ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, 2024 SCC OnLine SC 1755***; ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Another, 2024 SCC OnLine SC 1693***; ***Ankur Chaudhary v. State of Madhya Pradesh, Special Leave to Appeal (Crl.) No.4648/2024***; and ***Sunil Kumar Agrawal v. Directorate of Enforcement, 2024 SCC OnLine SC 1917***, where bails have been granted on ground of long incarceration and delay in completion of trial.



SUBMISSIONS ON BEHALF OF THE ED

22. FIR was registered by the CBI on 27.11.2020 in Kolkata against Anup Majee and other persons, which included unknown officials of ECL, CISF, Railways, etc. for commission of offences under Sections 409/120-B IPC and Section 13(2) read with Section 13(1)(a) of PC Act for illegal excavation and theft of coal from the leasehold area of ECL. Based on the scheduled offences, present ECIR was recorded by Headquarter Intelligence Unit of ED on 28.11.2020 for commission of offences under Sections 3 and 4 of PMLA.

23. Investigation revealed that Anup Majee @ Lala along with his associates was the main kingpin who organized most of the illegal mining at ECL area and transportation of illegally excavated/stolen coal. The activities were being carried out in connivance with public servants who were allowing him to misappropriate the coal, which is a Government property and granting protection and patronage to him. Applicant was one of the four partners of the illegal coal mining business who had 25% stake in the business and has been arraigned as accused No.10 in the predicate offence by CBI in the charge sheet filed before the CBI Court. Investigation further revealed that Niraj Singh, Accountant of Anup Majee used to maintain records of POC generated from illegal coal mining. These records seized by Income Tax Department during search proceedings from Niraj Singh at Kolkata and from Anup Majee's office at Bhamuria and IOCL Petrol Pump for the period July, 2018 to December, 2020 revealed a well organised crime syndicate run by Anup Majee, in which applicant has a major role and as per investigation conducted so far, POC worth Rs.2742.32 crores has been generated from the illegal coal mining in this period.



24. Court while considering a bail application under PMLA is required to be satisfied of the twin conditions under Section 45 of PMLA and unless the threshold is crossed by an applicant, bail cannot be granted. Reliance was placed on *Vijay Madanlal Choudhary (supra)*, *Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India, (2015) 16 SCC 1*; *Gautam Thapar v. Directorate of Enforcement, 2022 SCC OnLine Del 642*; *Satyendar Kumar Jain v. Directorate of Enforcement, 2023 SCC OnLine Del 1953*; and *Tarun Kumar v. Assistant Director Directorate of Enforcement, 2023 SCC OnLine SC 1486*.

25. In the present case, applicant has indulged in illegal mining and smuggling of coal and is involved in laundering of tainted money. POC generated from scheduled offence was concealed. Applicant with co-accused persons resorted to complex and multi-layered transactions through multiple persons and sham companies. Scrutiny of income tax records revealed that applicant received POC to the tune of Rs.89.04 crores, which was either delivered directly to him or through his nephew Tapas Maji. WhatsApp communications between the applicant and Niraj Singh demonstrated that they were in contact for delivery of POC. Digital evidence seized from residence of Subhash Agarwal, Chartered Accountant of the applicant, revealed active communication between them in respect of transfer of POC and this is corroborated by summary of tally record prepared by Niraj Singh. In fact, during the period 2017-18 to 2019-20, applicant received POC of Rs.36,79,49,000/-. Records including loose sheets and ledger books seized by Income Tax Department from the premises of the applicant at Balitora show his active involvement in the offence, as these contain details of coal



supplied to various parties, details of transportation of coal, etc. The trucks used to transport the coal are registered in the names of applicant's company and his nephew Tapas Maji. Applicant's family members are Directors/Proprietors/Owners of various shell companies acquired in the period F.Y. 2017-18 to F.Y. 2020-21 at nominal prices for the purpose of laundering of POC generated from illegal coal mining. Subhash Agarwal arranged accommodation entries for POC of around Rs.26 crores from 2016-2019.

26. In his statements under Section 50 of PMLA dated 06.12.2021 and 07.12.2021, Subhash Agarwal corroborated the fact that he arranged accommodation entries for the applicant and that 06 Kolkata based shell entities did not have any actual business but were involved in sale and purchase of unquoted shares and were essentially paper companies used for laundering POC generated from illegal coal mining. Rabin Kalai in his statement under Section 50 admitted that the ledger entries written by him were on direction of Anup Majee and Bamapada Dey and all of them were related to illegal coal collection and payments. Sanu Mallick in his statement under Section 50 of PMLA stated that he prepared debit/credit/payment vouchers and made entries in them on directions of Bamapada Dey and Rabin Kalai, who used to later verify them. Bamapada Dey in his statement admitted that he knew the applicant as a partner of Anup Majee and was the one who came to his office for money collection. In his statement under Section 50 of PMLA, Anup Majee admitted that Joydeb Mondal, Naran Nanda and applicant were partners with him in coal business and collectively received money. During confrontation of the applicant with Subhash Agarwal and Sudhir Kumar Jhunjhunwala on 01.06.2022, it was



revealed that Subhash Agarwal received Rs.26 crores during 2016-2019 on behalf of the applicant for acquiring 13 companies through accommodation entries. In light of the evidence on record, this Court will be unable to come to a satisfaction that there are reasonable grounds for believing that applicant is not guilty of the offence. Statements under Section 50 of PMLA can be considered by the Court at the stage of bail in view of the law laid down by the Supreme Court in *Rohit Tandon v. Directorate of Enforcement*, (2018) 11 SCC 46; *Vijay Madanlal Choudhary (supra)*; and *Satyendar Kumar Jain (supra)*.

27. With regard to the admissibility of ledgers, loose pages, etc., applicant relies heavily on the judgment in *V.C. Shukla (supra)*, however, the decision is not applicable to the present case. Complete records seized by the Income Tax Department are part of relied upon documents of the ED. Section 34 of the 1872 Act will not be attracted in view of the presumption in law under Section 22 of PMLA, which provides that where any record or property is found in the possession or control of any person, it shall be presumed that such record or property belongs to such person and the contents are true and in the handwriting of the said person. Rabin Kalai in his statement dated 12.08.2021 acknowledges his handwriting on the ledgers and the vouchers are acknowledged by Sanu Mallick in his statements on 30.09.2021 and 01.10.2021 and there is thus sufficient corroboration of the documents by oral statements.

28. It is incorrect for the applicant to argue that ED has failed to showcase the live link between predicate offence of smuggling of coal and the laundered amount as also the POC. Keeping in view the 03 ingredients of Section 3 of PMLA, i.e., person; process or activity; and product, it is



proved from the records seized from the premises of the applicant and Anup Majee, diary of Niraj Singh, electronic evidence collected by the Income Tax Department and Section 50 PMLA statements of witnesses that POC was generated by the applicant from the scheduled offence of illegal coal mining. POC has been identified at Rs.994.70 crores as of now out of which Rs.89.04 crores as POC is directly attributable to the applicant. CBI charge sheet is replete with the *modus operandi* adopted by the applicant in association with Anup Majee and others in which case the competent Court has taken cognizance. As per Section 24 of PMLA, it is for the applicant to discharge the burden that POC is not involved in the offence of money laundering but the applicant has been unable to rebut the legal presumption.

29. It is trite and repeatedly observed by the Supreme Court that economic offences are a class apart and need to be visited with a different approach in matter of bail as they involve deep-rooted conspiracies with huge loss to public funds and cannot be viewed lightly. Reliance was placed on the judgments in *Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, (2013) 7 SCC 439*; *Tarun Kumar (supra)*; and *Gautam Kundu (supra)*.

30. The argument of the applicant that the trial will take a long time as the investigation is pending and his continued custody is not necessary, is misconceived in view of the judgment of the Supreme Court in *Tarun Kumar (supra)*, where the Supreme Court observed that where the applicant is unable to overcome the threshold stipulations under Section 45 of PMLA, no relief can be granted on account of long incarceration. It is incorrect for the applicant to urge that he is not likely to commit any offence if granted bail. In *Rohit Tandon (supra)*, the Supreme Court has observed that the



Court has to consider the antecedents of the applicant, his propensity and nature and the manner in which he has allegedly committed the offence to record a finding as to the possibility of committing an offence while on bail. There are instances which would manifest that applicant has the propensity to commit crime inasmuch as in September, 2018 applicant was involved in an offence punishable under Section 20(b)(ii)(C) of NDPS Act. Even while in custody in connection with the said case between September, 2018 to November, 2019, his nephew Tapas Maji was dealing in collection of money generated from illegal coal mining on his behalf. After his arrest in the present case ECIR and during judicial custody, besides his Accountants, family members of the applicant were not co-operating with the investigation and every effort was made to stall the same.

31. Regarding applicant's claim to bail on ground of parity citing the non-arrest of Anup Majee and release of co-accused persons on bail, it would suffice to refer to the observations of the Supreme Court in **Tarun Kumar (supra)**, wherein it was observed that parity alone is not enough for bail inasmuch as the specific role of each accused has to be considered along with evidence on record and if the accused is not able to cross the threshold of Section 45 of PMLA, he cannot be enlarged on bail. Moreover, bail granted to co-accused Vikas Mishra has been challenged and interim bail granted to another co-accused Ashok Kumar Mishra has been revoked. Non-arrest of Anup Majee in the ECIR is due to procedural requirements under Section 19 of PMLA, which mandates sufficient material for arrest.

32. Applicant has relied on the judgment of the Supreme Court in **Manish Sisodia (supra)**, however, the same is inapplicable as bail was granted in the said case in the backdrop of an earlier order of the Supreme Court taking on



record the assurance of the ED that they shall conclude the trial within the next 6-8 months but despite this the trial was proceeding at snail's pace. In *Sheikh Javed Iqbal (supra)*, the Supreme Court has not laid down a general principle that in all cases where there is some delay in completion of trial, accused is entitled to bail as a matter of right. No doubt, in *Ankur Chaudhary (supra)*, bail was granted on account of custody of two years but it was in light of the special facts of that case. The judgment in *Sunil Kumar Agrawal (supra)*, is inapplicable as there the Chhattisgarh Police had not registered an offence against the Petitioner under Section 384 IPC and the Court was of the view that Section 384 IPC was the only scheduled offence whereupon proceedings under PMLA could have been initiated whereas in the present case, applicant has been arraigned as an accused in the predicate offence and there is overwhelming evidence to substantiate his involvement in the predicate offence as also the offence of money laundering.

33. Heard learned Senior Counsel for the applicant and learned Special Counsel for ED and examined their rival contentions.

ANALYSIS AND FINDINGS

34. It is a common ground between the Petitioner and ED that present ECIR was registered under Sections 3 and 4 of PMLA on 28.11.2020 after registration of FIR by the CBI on 27.11.2020 against Anup Majee and other public and private persons allegedly involved in activities relating to illegal excavation and theft of coal from leasehold area of ECL. Applicant was arrested on 27.05.2022 and produced before the learned Special Judge and remanded to ED custody till 02.06.2022, on which date he was sent to judicial custody and thus seeks regular bail in the present ECIR. Regular bail application of the applicant was rejected by the Trial Court vide order dated



20.09.2022.

35. Before embarking on the journey to decide this bail application, it would be useful to refer to Section 45 of PMLA, which provides that no person accused of an offence under PMLA shall be released on bail unless the twin conditions laid down therein are satisfied. Section 45 of PMLA is extracted hereunder for ease of reference:

“45. Offences to be cognizable and non-bailable. — (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one Crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Explanation. —For the removal of doubts, it is clarified that the expression “Offences to be cognizable and non-bailable” shall mean and



shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Criminal Procedure Code, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.”

36. The Supreme Court in its landmark judgment in ***Vijay Madanlal Choudhary (supra)***, upheld the Constitutional validity of Section 45 of PMLA, at the same time recognizing that though the provision restricts the right of the accused to grant of bail but the conditions do not impose an absolute restraint on the grant of bail and the discretion vests in the Court, which has to be exercised judiciously and not arbitrarily. The twin conditions in Section 45 of PMLA have been subject matter of extensive judicial scrutiny. In ***Gautam Kundu (supra)***, the Supreme Court emphasized that conditions were mandatory and apply in addition to general provisions for bail and under Cr.P.C. Paragraph 131 of the judgment in ***Vijay Madanlal Choudhary (supra)***, is extracted hereunder for reference:

“131. It is important to note that the twin conditions provided under section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under section 45 impose absolute restraint on the grant of bail. The discretion vests in the court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this court in Ranjitsing Brahmajeetsing Sharma (supra), held as under:

"44. The wording of section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of the MCOCA, therefore, must be construed reasonably. It must be so construed that the court



is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby".

(emphasis supplied)

We are in agreement with the observation made by the court in Ranjitsing Brahmajeetsing Sharma (supra). The court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the court based on available material on record is required. The court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this court in Nimmagadda Prasad (supra), the words used in section 45 of the 2002 Act are "reasonable grounds for believing" which means the court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge



beyond reasonable doubt.”

37. PMLA is an enactment aimed at combating the menace of money laundering which has far reaching implications on the economic stability of the country. Gravity of economic offences and need for a differential approach in matters of bail was highlighted by the Supreme Court in ***Y.S. Jagan Mohan Reddy (supra)***, where the Supreme Court observed that economic offences constitute a class apart and need to be approached with a different perspective even while considering a bail application. This was reinforced in ***Nimmagadda Prasad v. Central Bureau of Investigation, (2013) 7 SCC 466***, where the Supreme Court reiterated and reaffirmed that economic offences involve deep rooted conspiracies and cause huge loss of public funds and thus need to be viewed seriously.

38. At this stage it is pertinent to refer to the recent judgements of the Supreme Court in the case of ***Manish Sisodia (supra)***; ***Sunil Kumar Agrawal (supra)***; ***Javed Gulam Nabi Shaikh (supra)***; and ***Ankur Chaudhary (supra)*** and in light of the observations made therein, this bail application will have to be considered basis an interplay between Section 45 of PMLA and Article 21 of the Constitution of India, which guarantees right to personal liberty to every individual.

39. The Supreme Court in ***Masroor v. State of Uttar Pradesh and Another, (2009) 14 SCC 286***, observed that while deciding the bail application, Courts must strike a balance between the valuable right of liberty of an individual and the larger interest of the society. Article 21 of the Constitution of India has been interpreted expansively by the Supreme Court to encompass a panoply of rights including the right of an accused to



speedy trial. In *State of Rajasthan, Jaipur v. Balchand alias Baliay*, (1977) 4 SCC 308 and recently in *Manish Sisodia (supra)*, the Supreme Court reinforced the principle that ‘bail is the rule and jail is an exception’ and observed that right to speedy trial and right to liberty are sacrosanct rights and where there is long incarceration and trial has not even commenced, accused is deprived of his right to speedy trial. Relevant passages from the judgment in *Manish Sisodia (supra)*, are as follows:

“49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra⁶ wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh⁷, Shri Gurbaksh Singh Sibbia v. State of Punjab⁸, Hussainara Khatoon (I) v. Home Secretary, State of Bihar⁹, Union of India v. K.A. Najeeb¹⁰ and Satender Kumar Antil v. Central Bureau of Investigation¹¹. The Court observed thus:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:

“10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:



“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

“I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.””

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”.

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

55. As observed by this Court in the case of Gudikanti Narasimhulu (*supra*), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.”



40. Contentions of the rival parties need to be examined in light of these authoritative pronouncements laying down that Article 21 of the Constitution of India is a higher Constitutional right and Section 45 of PMLA would need to be aligned to the Constitutional mandate as also that right to bail in cases of delay in trial coupled with long incarceration, depending on the nature of allegations, would have to be read into Section 439 Cr.P.C. and Section 45 PMLA. Court is also conscious of the settled legal position that at the stage of considering a bail application under PMLA, it is not to enter into a meticulous examination of the merits of the case by delving into the statements of witnesses and/or documents produced in evidence and conduct a mini trial and only a *prima facie* satisfaction is to be recorded whether based on the material collected during the investigation, a reasonable belief can be formed that applicant is not guilty of the alleged offence and is not likely to commit an offence while on bail. [Ref.: *Sangitaben Shaileshbhai Datanta v. State of Gujarat and Another*, (2019) 14 SCC 522; *Bikramjit Singh v. State (Govt. of NCT of Delhi)*, 2020 SCC OnLine Del 2309; and *Jagjeet Singh and Others v. Ashish Mishra alias Monu and Another*, (2022) 9 SCC 321.]

41. Guided by the observations of the Supreme Court in a very recent judgement in *Manish Sisodia (supra)* that right to bail in case of delayed trial and long incarceration would be read into Section 439 Cr.P.C. and Section 45 of PMLA, I would now proceed to examine this application seeking bail. Applicant has been in judicial custody since 02.06.2022 and the trial has not even commenced. Applicant contends and in my view, rightly so, that many witnesses have been named and the case involves thousands of pages of documents which have to be examined on behalf of



the prosecution and there is no possibility of the trial concluding in the near future more so, when the trial has not even commenced. A three-Judge Bench of the Supreme Court in ***K.A. Najeeb (supra)***, considered the long incarceration of the accused and counterbalancing the same with the effect of Section 43-D(v) of UAPA observed as under:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

42. In ***Javed Gulam Nabi Sheikh (supra)***, the Supreme Court, referring to the earlier judgment of the Supreme Court in ***Satender Kumar Antil (supra)***, observed as under:

“17. In the recent decision, Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case



as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

18. *Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.*

19. *If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.*

20. *We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.*

21. *We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.*

22. *In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside.*

23. *The appellant is ordered to be released on bail subject to the terms and conditions which the trial court may deem fit to impose. However, we on our own would impose the condition that the appellant shall not leave the limits of Mumbai city and shall mark his presence at the concerned NIA office or police station once every fifteen days. Any other condition which the trial court may deem fit to impose, it may do so in accordance with law.”*

43. From the foregoing observations of the Supreme Court in the



judgments referred to above, it is evident that despite the stringent requirements under Section 45 of PMLA for grant of bail, the twin conditions therein do not create an absolute restraint or embargo or an insurmountable barrier in the way of the Court to grant bail on grounds of delay in completion of trial and long incarceration, which in this case is for a period of 27 months and 03 days. Maintaining a delicate balance between the twin conditions under Section 45 of PMLA and the need to combat economic offences and seeing with the prism of Article 21 of the Constitution of India, in my view, the applicant has made out a case for grant of bail keeping in view the incarceration of nearly 28 months and there being no possibility of the trial concluding in the near future.

44. ED has strenuously contended that there are reasonable grounds for believing that the applicant is guilty of the offence and does not cross the threshold of the twin conditions. Applicant is involved in illegal mining and smuggling of coal and laundering of tainted money. It is alleged that POC of scheduled offence were concealed by acquisition and use and were laundered under Section 3 of PMLA. An amount of Rs.89.04 crores is attributed as POC to the applicant with a nexus and live link to the predicate offence. Reliance is placed on the financial statements of the shell companies owned and managed by family members of the applicant and himself, purportedly created only on paper for the purpose of accommodation entries for laundering the POC. Reliance is also placed on Section 50 PMLA statement of Chartered Accountant Subhash Agarwal, who is stated to have arranged accommodation entries of POC of around Rs.26 crores during 2016-2019 received from the applicant as well as the statements of Anup Majee, etc. and WhatsApp communications between the



applicant and Niraj Singh as well as Subhash Agarwal to show that allegedly the POC was transferred to the applicant. As per the applicant, ED has failed to establish any nexus between the alleged POC of Rs.89.04 crores and the accommodation entries allegedly made by the applicant and it is also stated that the companies were acquired in March, 2017 to June, 2017 whereas the alleged period for generation of POC was December, 2017 to October, 2020 and hence the investments cannot be construed as POC generated from the scheduled offence. It is also claimed that at best, the unaccounted money could be tax evasion or violation but not an offence under Section 3 PMLA.

45. ED has relied on loose diaries/registers/handwritten notes seized by the Income Tax Department from Niraj Singh and the premises of Anup Majee. Applicant has taken shield of Section 34 of the 1872 Act which provides that entries in the books of accounts regularly kept in course of business are relevant but are not sufficient evidence alone to charge any person with liability. It is also urged that loose sheets are inadmissible in evidence and cannot be termed as 'book' as they can be easily detached and replaced and reliance is placed on the judgment of the Supreme Court in ***V.C. Shukla (supra)***.

46. In my view, the issues flagged by the respective parties are complex issues which would require further evidence and are best left to the Trial Court. Since this Court is inclined to grant bail on the touchstone of Article 21 of the Constitution of India, due to long incarceration of the applicant and the possibility of the trial not concluding in the near future, in light of the judgments of the Supreme Court in ***Manish Sisodia (supra)***, ***Sheikh Javed Iqbal (supra)*** and ***Sunil Kumar Agrawal (supra)***, the Court refrains from expressing opinion on the merits of the case at this stage.



47. On the aspect of the applicant being a flight risk *albeit* there was no serious opposition, yet this apprehension of the prosecution can be allayed by imposing stringent bail conditions. It is to be noted that on being granted bail by the Special Court in the predicate offence, applicant complied with all the bail conditions and joined the investigation as and when called for. It is also a matter of record that the investigation in the present matter *qua* the applicant is complete. Case of the ED is primarily based on documentary evidence and the relevant records/documents have been seized and are in custody of investigating agencies and thus cannot be tampered. ED has not argued that there is any possibility of intimidating the witnesses.

CONCLUSION:

48. Considering the aforesaid facts and circumstances, the application is allowed and it is directed that the applicant be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.5,00,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court and further subject to the following conditions:

- (1) Applicant will not leave the country without prior permission of the Trial Court and shall surrender his passport with the Trial Court;
- (2) He shall furnish his permanent residential address to the Trial Court and the Investigating Officer (IO) and shall intimate the Court by way of an affidavit and the IO regarding any change in the residential address;
- (3) He shall provide his mobile number to the IO concerned and keep the same active at all times and the mobile number shall not be changed without prior intimation to the IO;



- (4) He shall appear before the Trial Court, as and when the matter is taken up for hearing;
 - (5) He shall not indulge in any criminal activity directly or indirectly and will make no attempt to contact the witnesses associated with the case; and
 - (6) He shall contact the IO on every Monday and Thursday between 10:00 and 11:00 AM.
49. I may add the usual caveat that any observations in this judgment will not tantamount to an expression of opinion on the merits of the case.
50. Application stands disposed of.
51. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

AUGUST 30, 2024/kks